

62A-3-101. Definitions.

As used in this chapter:

- (1) "Adult" or "high risk adult" means a person 18 years of age or older who experiences a condition:
 - (a) that places the person at a high risk of being unable to care for himself:
 - (i) as determined by assessment; and
 - (ii) due to the onset of a physical or cognitive impairment or frailty; and
 - (b) for which the person is not eligible to receive services under:
 - (i) Chapter 5, Services to People with Disabilities; or
 - (ii) Chapter 15, Substance Abuse and Mental Health Act.
- (2) "Aging" and "aged" means a person 60 years of age or older.
- (3) "Area agency" means an area agency that provides services to the aged, high risk adults, or both within a planning and service area.
- (4) "Area agency on aging" means a public or private nonprofit agency or office designated by the division to:
 - (a) operate within a planning and service area of the state; and
 - (b) develop and implement a broad range of services for the aged in the area described in Subsection (4)(a).
- (5) "Area agency on high risk adults" means a public or private nonprofit agency or office designated by the division to:
 - (a) operate within a planning and service area of the state; and
 - (b) develop and implement services for high risk adults in the area described in Subsection (5)(a).
- (6) "Board" means the Board of Aging and Adult Services.
- (7) "Director" means the director of the division.
- (8) "Division" means the Division of Aging and Adult Services within the department.
- (9) "Personal care attendant" means a person who:
 - (a) is selected by:
 - (i) an aged person;
 - (ii) an agent of an aged person;
 - (iii) a high risk adult; or
 - (iv) an agent of a high risk adult; and
 - (b) provides personal services to the:
 - (i) aged person described in Subsection (9)(a)(i); or
 - (ii) high risk adult described in Subsection (9)(a)(iii).
- (10) "Personal services" means nonmedical care and support, including assisting a person with:
 - (a) meal preparation;
 - (b) eating;
 - (c) bathing;
 - (d) dressing;
 - (e) personal hygiene; or
 - (f) daily living activities.
- (11) "Planning and service area" means a geographical area of the state

designated by the division for purposes of planning, development, delivery, and overall administration of services for the aged or high risk adults.

(12) (a) "Public funds" means state or federal funds that are disbursed by:

- (i) the Department of Health;
- (ii) the division;
- (iii) an area agency; or
- (iv) an area agency on aging.

(b) "Public funds" includes:

- (i) Medicaid funds; and
- (ii) Medicaid waiver funds.

Amended by Chapter 107, 2005 General Session

62A-3-102. Division created.

There is created a Division of Aging and Adult Services within the department, under the administration and general supervision of the executive director.

Amended by Chapter 181, 1990 General Session

62A-3-103. Director of division -- Appointment -- Qualifications.

(1) The director of the division shall be appointed by the executive director with the concurrence of the board.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning the aging and adult populations.

(3) The director is the administrative head of the division.

Amended by Chapter 104, 1992 General Session

62A-3-104. Authority of division.

(1) The division is the sole state agency, as defined by the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., to:

(a) serve as an effective and visible advocate for the aging and adult population of this state;

(b) develop and administer a state plan under the policy direction of the board; and

(c) take primary responsibility for state activities relating to provisions of the Older Americans Act of 1965, as amended.

(2) (a) The division has authority to designate:

(i) planning and service areas for the state; and

(ii) an area agency on aging within each planning and service area to design and implement a comprehensive and coordinated system of services and programs for the aged within appropriations from the Legislature.

(b) Designation as an area agency on aging may be withdrawn:

(i) upon request of the area agency on aging; or

(ii) upon noncompliance with the provisions of the:
(A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;
(B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;

(C) provisions of this chapter; or

(D) rules, policies, or procedures established by the division.

(3) (a) The division has the authority to designate:

(i) planning and service areas for the state; and

(ii) subject to Subsection (3)(b), an area agency on high risk adults within each planning and service area to design and implement a comprehensive and coordinated system of case management and programs for high risk adults within appropriations from the Legislature.

(b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall designate as the area agency on high risk adults in a planning and service area:

(i) the area agency on aging that operates within the same geographic area if that agency requests, before July 1, 1998, to expand that agency's current contract with the division to include the responsibility of:

(A) being the area agency on high risk adults; or

(B) operating the area agency on high risk adults:

(I) through joint cooperation with one or more existing area agencies on aging;
and

(II) without reducing geographical coverage in any service area; or

(ii) a public or private nonprofit agency or office if the area agency on aging that operates within the same geographic area has not made a request in accordance with Subsection (3)(b)(i).

(c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.

(ii) The division's efforts to establish area agencies on high risk adults shall start with counties with a population of more than 150,000 people.

(d) Designation as an area agency on high risk adults may be withdrawn:

(i) upon request by the area agency; or

(ii) upon noncompliance with:

(A) state law;

(B) federal law; or

(C) rules, policies, or procedures established by the division.

(4) (a) The division may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures:

(i) seek federal grants, loans, or participation in federal programs; and

(ii) receive and distribute state and federal funds for the division's programs and services to the aging and adult populations of the state.

(b) The division may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 62A-3-104.3.

(5) The division has authority to establish, either directly or by contract, programs of advocacy, monitoring, evaluation, technical assistance, and public

education to enhance the quality of life for aging and adult citizens of the state.

(6) In accordance with the rules of the division and Title 63G, Chapter 6a, Utah Procurement Code, the division may contract with:

(a) the governing body of an area agency to provide a comprehensive program of services; or

(b) public and private entities for special services.

(7) The division has authority to provide for collection, compilation, and dissemination of information, statistics, and reports relating to issues facing aging and adult citizens.

(8) The division has authority to prepare and submit reports regarding the operation and administration of the division to the department, the Legislature, and the governor, as requested.

(9) The division shall:

(a) implement and enforce policies established by the board governing all aspects of the division's programs for aging and adult persons in the state;

(b) in order to ensure compliance with all applicable state and federal statutes, policies, and procedures, monitor and evaluate programs provided by or under contract with:

(i) the division;

(ii) area agencies; and

(iii) an entity that receives funds from an area agency;

(c) examine expenditures of public funds;

(d) withhold funds from programs based on contract noncompliance;

(e) review and approve plans of area agencies in order to ensure:

(i) compliance with division policies; and

(ii) a statewide comprehensive program;

(f) in order to further programs for aging and adult persons and prevent duplication of services, promote and establish cooperative relationships with:

(i) state and federal agencies;

(ii) social and health agencies;

(iii) education and research organizations; and

(iv) other related groups;

(g) advocate for the aging and adult populations;

(h) promote and conduct research on the problems and needs of aging and adult persons;

(i) submit recommendations for changes in policies, programs, and funding to the:

(i) governor; and

(ii) Legislature; and

(j) (i) accept contributions to and administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and

(ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate the administration of the "Out and About" Homebound Transportation Assistance Fund in accordance with Section 62A-3-110.

Amended by Chapter 347, 2012 General Session

62A-3-104.1. Powers and duties of area agencies.

(1) An area agency that provides services to an aged person, or a high risk adult shall within the area agency's respective jurisdiction:

- (a) advocate by monitoring, evaluating, and providing input on all policies, programs, hearings, and levies that affect a person described in this Subsection (1);
- (b) design and implement a comprehensive and coordinated system of services within a designated planning and service area;
- (c) conduct periodic reviews and evaluations of needs and services;
- (d) prepare and submit to the division plans for funding and service delivery for services within the designated planning and service area;
- (e) establish, either directly or by contract, programs licensed under Chapter 2, Licensure of Programs and Facilities;
- (f) (i) appoint an area director;
- (ii) prescribe the area director's duties; and
- (iii) provide adequate and qualified staff to carry out the area plan described in Subsection (1)(d);
- (g) establish rules not contrary to policies of the board and rules of the division, regulating local services and facilities;
- (h) operate other services and programs funded by sources other than those administered by the division;
- (i) establish mechanisms to provide direct citizen input, including an area agency advisory council with a majority of members who are eligible for services from the area agency;
- (j) establish fee schedules; and
- (k) comply with the requirements and procedures of:
 - (i) Title 11, Chapter 13, Interlocal Cooperation Act; and
 - (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

(2) Before disbursing any public funds, an area agency shall require that all entities receiving any public funds agree in writing that:

- (a) the division may examine the entity's program and financial records; and
- (b) the auditor of the local area agency may examine and audit the entity's program and financial records, if requested by the local area agency.

(3) An area agency on aging may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 62A-3-104.3.

(4) (a) For the purpose of providing services pursuant to this part, a local area agency may receive:

- (i) property;
- (ii) grants;
- (iii) gifts;
- (iv) supplies;
- (v) materials;

(vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v); and

(vii) contributions.

(b) If a gift is conditioned upon the gift's use for a specified service or program, the gift shall be used for the specific service or program.

(5) (a) Area agencies shall award all public funds in compliance with:

(i) the requirements of Title 63G, Chapter 6a, Utah Procurement Code; or

(ii) a county procurement ordinance that requires procurement procedures similar to those described in Subsection (5)(a)(i).

(b) (i) If all initial bids on a project are rejected, the area agency shall publish a new invitation to bid.

(ii) If no satisfactory bid is received by the area agency described in Subsection (5)(b)(i), when the bids received from the second invitation are opened the area agency may execute a contract without requiring competitive bidding.

(c) (i) An area agency need not comply with the procurement provisions of this section when it disburses public funds to another governmental entity.

(ii) For purposes of this Subsection (5)(c), "governmental entity" means any political subdivision or institution of higher education of the state.

(d) (i) Contracts awarded by an area agency shall be for a:

(A) fixed amount; and

(B) limited period.

(ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in available funding for the same contract purpose without competition.

(6) Local area agencies shall comply with:

(a) applicable state and federal:

(i) statutes;

(ii) policies; and

(iii) audit requirements; and

(b) directives resulting from an audit described in Subsection (6)(a)(iii).

Amended by Chapter 347, 2012 General Session

62A-3-104.2. Contracts for services.

When an area agency has established a plan to provide services authorized by this chapter, and those services meet standards fixed by rules of the board, the area agency may enter into a contract with the division for services to be furnished by that area agency for an agreed compensation to be paid by the division.

Amended by Chapter 254, 1998 General Session

62A-3-104.3. Disbursal of public funds -- Background check of a personal care attendant.

(1) For purposes of this section, "office" is as defined in Section 62A-2-101.

(2) Subject to Subsection (4), public funds may not be disbursed to a personal care attendant as payment for personal services rendered to an aged person or high

risk adult, unless the personal care attendant is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120.

(3) For purposes of Subsection (2), the office shall conduct a background check of a personal care attendant:

(a) who desires to receive public funds as payment for the personal services described in Subsection (2); and

(b) using the same procedures established for a background check of an applicant for an initial license under Section 62A-2-120.

(4) The background check and the approval determination described in this section shall be conducted for a personal care attendant on an annual basis.

Enacted by Chapter 107, 2005 General Session

62A-3-105. Matching requirements for state and federal Older American funds.

(1) Except as provided in Subsection (2), a local area agency on aging that receives state or federal Older Americans Act Supportive Services, Older Americans Act Congregate Meals, or Older Americans Act Home Delivered Meals related funds from the division to provide programs and services under this chapter shall match those funds in an amount at least equal to:

(a) 15% of service dollars; and

(b) 25% of administrative dollars.

(2) A local area agency on aging is not required to match cash-in-lieu funds related to the Home Delivered Meals program or congregate meals.

(3) A local area agency on aging may include services, property, or other in-kind contributions to meet the administrative dollars match but may only use cash to meet the service dollars match.

Amended by Chapter 110, 2013 General Session

62A-3-106. Eligibility criteria.

Eligibility for services provided by the division directly or through contractual arrangements shall be determined by criteria established by the division and approved by the board.

Enacted by Chapter 1, 1988 General Session

62A-3-106.5. Agency responsible to investigate and provide services.

(1) For purposes of this section, "responsible agency" means the agency responsible to investigate or provide services in a particular case under the rules established under Subsection (2)(a).

(2) In order to avoid duplication in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, that establish procedures to:

(a) determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case; and

(b) determine whether, and under what circumstances, the agency described in Subsection (2)(a) that is not the responsible agency will provide assistance to the responsible agency in a particular case.

(3) Notwithstanding Subsection (2), or the rules made pursuant to Subsection (2), Adult Protective Services shall be the agency within the division that is responsible for receiving all reports of alleged abuse, neglect, or exploitation of a vulnerable adult as provided in Section 62A-3-305.

Amended by Chapter 382, 2008 General Session

62A-3-107. Requirements for establishing division policy.

(1) The board is the program policymaking body for the division and for programs funded with state and federal money under Sections 62A-3-104.1 and 62A-3-104.2. In establishing policy and reviewing existing policy, the board shall seek input from local area agencies, consumers, providers, advocates, division staff, and other interested parties as determined by the board.

(2) The board shall establish, by rule, procedures for developing its policies which ensure that local area agencies are given opportunity to comment and provide input on any new policy of the board and on any proposed changes in the board's existing policy. The board shall also provide a mechanism for review of its existing policy and for consideration of policy changes that are proposed by those local area agencies.

(3) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

62A-3-107.5. Allocation of funds to acquire facilities.

(1) (a) The board may make grants to local area agencies on aging to acquire facilities to provide community-based services for aged persons. Grants under this section shall be made solely from appropriations made to the division for implementation of this section.

(b) Acquisition of a facility may include acquisition of real property, construction of a new facility, acquisition of an existing facility, or alteration, renovation, or improvement of an existing facility.

(c) The local area agency may allocate grants received under this section to a

local nonprofit or governmental agency that owns or operates a facility to provide community-based services for aged persons.

(2) A local area agency on aging or the local nonprofit or governmental agency that owns or operates the facility and receives grant money from the area agency shall provide a matching contribution of at least 25% of the grant funds it receives under this section. A matching contribution may include funds, services, property, or other in-kind contributions.

(3) In making grants under this section, the board may consider:

(a) the extent and availability of public and private funding to operate programs in the facility to be acquired and to provide for maintenance of that facility;

(b) the need for community-based services in the geographical area served by the area agency on aging;

(c) the availability of private and local funds to assist in acquisition, alteration, renovation, or improvement of the facility; and

(d) the extent and level of support for acquisition of the facility from local government officials, private citizens, interest groups, and others.

(4) Grants to local area agencies on aging and any local nonprofit or governmental agency that owns or operates a facility and receives grant money from the area agency under this section are subject to the oversight and control by the division described in Subsection 62A-3-104(8).

(5) It is the intent of the Legislature that the grants made under this section serve the statewide purpose of providing support for senior citizens throughout the state, and that the grants shall be made to serve as effectively as possible the facilities in greatest need of assistance.

Enacted by Chapter 299, 1996 General Session

62A-3-108. Allocation of funds to local area agencies -- Formulas.

(1) The board shall establish by rule formulas for allocating funds to local area agencies through contracts to provide programs and services in accordance with this part based on need. Determination of need shall be based on the number of eligible persons located in the local area which the division is authorized to serve, unless federal regulations require otherwise or the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. Formulas established by the board shall include a differential to compensate for additional costs of providing services in rural areas.

(2) Formulas established under Subsection (1) shall be in effect on or before July 1, 1998, and apply to all state and federal funds appropriated by the Legislature to the division for local area agencies, but does not apply to:

(a) funds that local area agencies receive from sources other than the division;

(b) funds that local area agencies receive from the division to operate a specific program within its jurisdiction which is available to all residents of the state;

(c) funds that a local area agency receives from the division to meet a need that exists only within that local area; and

(d) funds that a local area agency receives from the division for research

projects.

Amended by Chapter 254, 1998 General Session

62A-3-109. Adjudicative proceedings.

Adjudicative proceedings held by, or relating to, the division or the board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 91, 2008 General Session

Amended by Chapter 382, 2008 General Session

62A-3-110. "Out and About" Homebound Transportation Assistance Fund.

(1) (a) There is created an expendable special revenue fund known as the "Out and About" Homebound Transportation Assistance Fund.

(b) The "Out and About" Homebound Transportation Assistance Fund shall consist of:

- (i) private contributions;
- (ii) donations or grants from public or private entities;
- (iii) voluntary donations collected under Section 53-3-214.8; and
- (iv) interest and earnings on account money.

(c) The cost of administering the "Out and About" Homebound Transportation Assistance Fund shall be paid from money in the fund.

(2) The Division of Aging and Adult Services in the Department of Human Services shall:

- (a) administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund; and
- (b) select qualified organizations and distribute the funds in the "Out and About" Homebound Transportation Assistance Fund in accordance with Subsection (3).

(3) (a) The division may distribute the funds in the "Out and About" Homebound Transportation Assistance Fund to a selected organization that provides public transportation to aging persons, high risk adults, or people with disabilities.

(b) An organization that provides public transportation to aging persons, high risk adults, or people with disabilities may apply to the Division of Aging and Adult Services, in a manner prescribed by the division, to receive all or part of the money contained in the "Out and About" Homebound Transportation Assistance Fund.

Amended by Chapter 167, 2013 General Session

Amended by Chapter 400, 2013 General Session

62A-3-201. Legislative findings -- Purpose -- Ombudsman.

The Legislature finds and declares that the aging citizens of this state should be assisted in asserting their civil and human rights as patients, residents, and clients of long-term care facilities created to serve their specialized needs and problems; and that for the health, safety, and welfare of these citizens, the state should take

appropriate action through an adequate legal framework to address their difficulties.

The purpose of this part is to establish within the division the long-term care ombudsman program for the aging citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care for aging citizens, and to fulfill federal requirements.

Enacted by Chapter 1, 1988 General Session

62A-3-202. Definitions.

As used in this part:

(1) "Elderly resident" means an adult 60 years of age or older who because of physical, economic, social, or emotional problems cannot function normally on an independent basis, and who resides in a long-term care facility.

(2) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.

(3) "Long-term care facility" means any skilled nursing facility, intermediate care facility, nursing home, assisted living facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

(4) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 62A-3-203.

Amended by Chapter 192, 1998 General Session

62A-3-203. Creation of Long-Term Care Ombudsman Program -- Responsibilities.

(1) (a) There is created within the division the Long-Term Care Ombudsman Program for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the state.

(b) Subject to the rules made under Section 62A-3-106.5, the ombudsman is responsible for:

(i) receiving and resolving complaints relating to elderly residents of long-term care facilities;

(ii) conducting investigations of any act, practice, policy, or procedure of any long-term care facility or government agency which it has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of any elderly resident of a long-term care facility;

(iii) coordinating the department's services for elderly residents of long-term care facilities to ensure that those services are made available to eligible elderly citizens of the state; and

(iv) providing training regarding the delivery and regulation of long-term care to

public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.

(2) (a) A long-term care facility shall display an ombudsman program information poster.

(b) The division is responsible for providing the posters, which shall include the names and phone numbers for local ombudsman programs.

Amended by Chapter 31, 2006 General Session

62A-3-204. Powers and responsibilities of ombudsman.

The long-term care ombudsman shall:

(1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;

(2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with elderly residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;

(3) investigate an administrative act or omission of any long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;

(4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;

(5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;

(6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;

(7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the long-term care ombudsman program under this part; and

(8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

Amended by Chapter 75, 2009 General Session

62A-3-205. Procedures -- Adjudicative proceedings.

The long-term care ombudsman shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

62A-3-206. Investigation of complaints -- Procedures.

(1) (a) The ombudsman shall investigate each complaint he receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.

(b) The ombudsman shall notify any complainant of its decision to not pursue investigation of a complaint after the initial investigation and the reasons for the decision.

(2) In making any investigation, the ombudsman may engage in actions it deems appropriate including, but not limited to:

(a) making inquiries and obtaining information;

(b) holding investigatory hearings;

(c) entering upon and inspecting any premises, without notice to the facility, provided the investigator identifies himself upon entering the premises as a person authorized by this part to inspect the premises; and

(d) inspecting or obtaining any book, file, medical record, or other record required by law to be retained by the long-term care facility or governmental agency, pertaining to elderly residents, subject to Subsection (3).

(3) (a) Before reviewing a resident's records, the ombudsman shall seek to obtain written permission to review the records from the institutionalized elderly person or his legal representative.

(b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the elderly resident or his legal representative. If the resident or legal representative refuses to sign a release allowing access to records, the ombudsman shall record and abide by this decision. If the attempt to obtain a signed release fails for any other reason, the ombudsman may review the records.

(4) Following any investigation, the ombudsman shall report its findings and recommendations to the complainant, elderly residents of long-term care facilities affected by the complaint, and to the long-term care facility or governmental agency involved.

Amended by Chapter 324, 2010 General Session

62A-3-207. Confidentiality of materials relating to complaints or investigations -- Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.

(1) The ombudsman shall establish procedures to assure that all files maintained by the long-term care ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or elderly resident of a long-term care facility may not be disclosed by the ombudsman unless:

(a) the complainant or elderly resident, or the legal representative of either, consents in writing to the disclosure;

(b) disclosure is ordered by the court; or

(c) the disclosure is made to a local area agency on aging, the state adult protective services agency, the Department of Health, the Department of Public Safety,

the local law enforcement agency, or the county attorney as part of the investigation of a complaint.

(2) Neither the ombudsman nor its agents or designees may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce the provisions of this part.

(3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.

(4) (a) Discriminatory, disciplinary, or retaliatory action may not be taken against any volunteer or employee of a long-term care facility or governmental agency, or against any elderly resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.

(b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

Amended by Chapter 176, 1993 General Session

62A-3-208. Prohibited acts -- Penalty.

(1) No person may:

(a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;

(b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;

(c) willfully interfere with the lawful actions of the ombudsman;

(d) willfully refuse to comply with lawful demands of the ombudsman, including the demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to any elderly resident of a long-term care facility; or

(e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter which is before the ombudsman for determination of whether an investigation should be conducted.

(2) Violation of any provision of this part constitutes a class B misdemeanor.

Enacted by Chapter 1, 1988 General Session

62A-3-301. Definitions.

As used in this part:

(1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(2) "Abuse" means:

- (a) knowingly or intentionally:
 - (i) attempting to cause harm;
 - (ii) causing harm; or
 - (iii) placing another in fear of harm;
- (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;
- (c) emotional or psychological abuse;
- (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or
- (e) deprivation of life sustaining treatment, or medical or mental health treatment, except:
 - (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or
 - (ii) when informed consent, as defined in Section 76-5-111, has been obtained.
- (3) "Adult" means a person who is 18 years of age or older.
- (4) "Adult protection case file" means a record, stored in any format, contained in a case file maintained by Adult Protective Services.
- (5) "Adult Protective Services" means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.
- (6) "Capacity to consent" means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person's property and lifestyle, including a decision to accept or refuse services.
- (7) "Caretaker" means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities.
- (8) "Counsel" means an attorney licensed to practice law in this state.
- (9) "Database" means the statewide database maintained by the division under Section 62A-3-311.1.
- (10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
- (11) "Elder adult" means a person 65 years of age or older.
- (12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.
- (13) (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
 - (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating, coercing, or harassing.
 - (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:
 - (i) engage in the conduct; or
 - (ii) cause mental anguish, emotional distress, fear, humiliation, degradation,

agitation, or confusion.

(14) "Exploitation" means an offense described in Subsection 76-5-111(4) or Section 76-5b-202.

(15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.

(16) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

(17) "Intimidation" means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.

(18) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:

(i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;

(ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

(iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

(b) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

(19) "Lacks capacity to consent" is as defined in Section 76-5-111.

(20) (a) "Neglect" means:

(i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or

(B) failure of a caretaker to provide protection from health and safety hazards or maltreatment;

(ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;

(iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;

(iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;

(v) self-neglect by the vulnerable adult; or

(vi) abandonment by a caretaker.

(b) "Neglect" does not include conduct, or failure to take action, that is permitted

or excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

(21) "Physical injury" includes the damage and conditions described in Section 76-5-111.

(22) "Protected person" means a vulnerable adult for whom the court has ordered protective services.

(23) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.

(24) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

(25) "Serious physical injury" is as defined in Section 76-5-111.

(26) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

(27) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

(28) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:

- (a) provide personal protection;
- (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- (c) obtain services necessary for health, safety, or welfare;
- (d) carry out the activities of daily living;
- (e) manage the adult's own financial resources; or
- (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(29) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Amended by Chapter 149, 2012 General Session

62A-3-302. Purpose of Adult Protective Services Program.

Subject to the rules made by the division under Section 62A-3-106.5, Adult Protective Services:

(1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults;

(2) shall, where appropriate, provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult; and

(3) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and develop procedures and policies relating to:

- (a) reporting and investigating incidents of abuse, neglect, or exploitation; and

(b) providing protective services to the extent that funds are appropriated by the Legislature for this purpose.

Amended by Chapter 91, 2008 General Session

62A-3-303. Powers and duties of Adult Protective Services.

In addition to all other powers and duties that Adult Protective Services is given under this part, Adult Protective Services:

- (1) shall maintain an intake system for receiving and screening reports;
- (2) shall investigate referrals that meet the intake criteria;
- (3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;
- (4) shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;
- (5) may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;
- (6) may provide short-term, limited services to a vulnerable adult when family or community resources are not available to provide for the protective needs of the vulnerable adult;
- (7) shall have access to facilities licensed by, or contracted with, the department or the Department of Health for the purpose of conducting investigations;
- (8) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including private, controlled, or protected medical or financial records of a vulnerable adult who is the subject of an investigation if:
 - (a) for a vulnerable adult who does not lack capacity to consent, the vulnerable adult signs a release of information; or
 - (b) for a vulnerable adult who lacks capacity to consent, an administrative subpoena is issued by Adult Protective Services;
- (9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (10) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including the provision of statements, documents, exhibits, and other items that assist Adult Protective Services in conducting investigations and providing protective services;
- (11) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;
- (12) may conduct studies and compile data regarding abuse, neglect, and exploitation; and
- (13) may issue reports and recommendations.

Amended by Chapter 245, 2014 General Session

62A-3-304. Cooperation by caretaker.

A caretaker, facility, or other institution shall, regardless of the confidentiality standards of the caretaker, facility, or institution:

- (1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this chapter;
- (2) cooperate with any Adult Protective Services investigation;
- (3) provide Adult Protective Services with access to records or documents relating to the vulnerable adult who is the subject of an investigation; or
- (4) provide evidence in any judicial or administrative proceeding relating to a vulnerable adult who is the subject of an investigation.

Amended by Chapter 91, 2008 General Session

62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Nonmedical healing.

(1) A person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.

(2) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult:

(a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and

(b) the law enforcement agency may initiate an investigation in cooperation with Adult Protective Services.

(3) A person who in good faith makes a report or otherwise notifies a law enforcement agency or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.

(4) (a) A person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.

(b) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to report suspected abuse or neglect, as required by this section, is subject to a private right of action and liability for the abuse or neglect of another person that is committed by the individual who was not reported to Adult Protective Services in accordance with this section.

(5) Under circumstances not amounting to a violation of Section 76-8-508, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

(6) An adult is not considered abused, neglected, or a vulnerable adult for the

reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Amended by Chapter 328, 2012 General Session

62A-3-307. Photographing, video, and audio taping.

Law enforcement or Adult Protective Services investigators may collect evidence regarding alleged abuse, neglect, or exploitation of a vulnerable adult by taking, or causing to be taken, photographs, video tape recordings, or audio or video tape accounts of a vulnerable adult, if the vulnerable adult:

- (1) consents to the taking of the photographs, video tape recordings, or audio or video tape accounts; or
- (2) lacks the capacity to give the consent described in Subsection (1).

Repealed and Re-enacted by Chapter 91, 2008 General Session

62A-3-308. Peace officer's authority to transport -- Notification.

(1) A peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility, if:

- (a) the officer has probable cause to believe that:
 - (i) by reason of abuse, neglect, or exploitation there exist exigent circumstances; and
 - (ii) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment;
- (b) the vulnerable adult refuses to consent or lacks capacity to consent; and
- (c) there is not time to notify interested parties or to apply for a warrant or other court order.

(2) A peace officer described in Subsection (1) shall, within four hours after a vulnerable adult is transported to an appropriate medical or shelter facility:

- (a) notify Adult Protective Services intake; and
- (b) request that Adult Protective Services or the division file a petition with the court for an emergency protective order.

Amended by Chapter 91, 2008 General Session

62A-3-309. Enforcement by division -- Duty of county or district attorney.

(1) It is the duty of the county or district attorney, as appropriate under Sections 17-18a-202 and 17-18a-203, to:

- (a) assist and represent the division;
- (b) initiate legal proceedings to protect vulnerable adults; and
- (c) take appropriate action to prosecute the alleged offenders.

(2) If the county or district attorney fails to act upon the request of the division to provide legal assistance within five business days after the day on which the request is made:

- (a) the division may request the attorney general to act; and

(b) the attorney general may, in the attorney general's discretion, assume the responsibilities and carry the action forward in place of the county or district attorney.

Amended by Chapter 237, 2013 General Session

62A-3-311. Requests for records.

(1) Requests for records maintained by Adult Protective Services shall be made in writing to Adult Protective Services.

(2) Classification and disclosure of records shall be made in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 91, 2008 General Session

Amended by Chapter 382, 2008 General Session

62A-3-311.1. Statewide database -- Restricted use and access.

(1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.

(2) The database shall include:

(a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;

(b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:

(i) supported;

(ii) inconclusive;

(iii) without merit; or

(iv) for reports for which the finding is made before May 5, 2008:

(A) substantiated; or

(B) unsubstantiated; and

(c) any other information that may be helpful in furthering the purposes of this part, as determined by the division.

(3) Information obtained from the database may be used only:

(a) for statistical summaries compiled by the department that do not include names or other identifying data;

(b) where identification of a person as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:

(i) the department;

(ii) the Division of Occupational and Professional Licensing;

(iii) the Bureau of Licensing, within the Department of Health;

(iv) any government agency specifically authorized by statute to access or use the information in the database; or

(v) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or

(c) as otherwise specifically provided by law.

Amended by Chapter 91, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-3-311.5. Notice of supported finding -- Procedure for challenging finding -- Limitations.

(1) (a) Except as provided in Subsection (1)(b), within 15 days after the day on which the division makes a supported finding that a person committed abuse, neglect, or exploitation of a vulnerable adult, the division shall serve the person with a notice of agency action, in accordance with Subsections (2) and (3).

(b) The division may serve the notice described in Subsection (1)(a) within a reasonable time after the 15 day period described in Subsection (1)(a) if:

(i) the delay is necessary in order to:

(A) avoid impeding an ongoing criminal investigation or proceeding; or

(B) protect the safety of a person; and

(ii) the notice is provided before the supported finding is used as a basis to deny the person a license or otherwise adversely impact the person.

(2) The division shall cause the notice described in Subsection (1)(a) to be served by personal service or certified mail.

(3) The notice described in Subsection (1)(a) shall:

(a) indicate that the division has conducted an investigation regarding alleged abuse, neglect, or exploitation of a vulnerable adult by the alleged perpetrator;

(b) indicate that, as a result of the investigation described in Subsection (3)(a), the division made a supported finding that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult;

(c) include a summary of the facts that are the basis for the supported finding;

(d) indicate that the supported finding may result in disqualifying the person from:

(i) being licensed, certified, approved, or employed by a government agency;

(ii) being employed by a service provider, person, or other entity that contracts with, or is licensed by, a government agency; or

(iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii);

(e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying information is listed in the database;

(f) indicate that the alleged perpetrator may request a copy of the report of the alleged abuse, neglect, or exploitation; and

(g) inform the alleged perpetrator of:

(i) the right described in Subsection (4)(a); and

(ii) the consequences of failing to exercise the right described in Subsection (4)(a) in a timely manner.

(4) (a) The alleged perpetrator has the right, within 30 days after the day on which the notice described in Subsection (1)(a) is served, to challenge the supported finding by filing a request for an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act.

(b) If the alleged perpetrator fails to file a request for an informal adjudicative

proceeding within the time described in Subsection (4)(a), the supported finding will become final and will not be subject to challenge or appeal.

(5) At the hearing described in Subsection (4)(a), the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult.

(6) Notwithstanding any provision of this section, an alleged perpetrator described in this section may not challenge a supported finding if a court of competent jurisdiction entered a finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported finding is based.

(7) A person who was listed in the database as a perpetrator before May 5, 2008, and who did not have an opportunity to challenge the division's finding that resulted in the listing, may at any time:

(a) request that the division reconsider the division's finding; or

(b) request an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act, to challenge the finding.

Enacted by Chapter 91, 2008 General Session

62A-3-312. Access to information in database.

The database and the adult protection case file:

(1) shall be made available to law enforcement agencies, the attorney general's office, city attorneys, and county or district attorney's offices;

(2) shall be released as required under Subsection 63G-2-202(4)(c); and

(3) may be made available, at the discretion of the division, to:

(a) subjects of a report as follows:

(i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and

(ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and

(b) persons involved in an evaluation or assessment of the vulnerable adult as follows:

(i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;

(ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;

(iii) an authorized person or agency providing services to, or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to, the victim;

(iv) a licensing authority for a facility, program, or person providing care to a victim named in a report; and

(v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:

(A) the Office of Public Guardian, created in Section 62A-14-103; and

(B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

Amended by Chapter 245, 2014 General Session

62A-3-314. Private right of action -- Estate asset -- Attorney fees.

(1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator.

(2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.

(3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff.

(4) If the defendant prevails in an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

Amended by Chapter 176, 2007 General Session

62A-3-315. Protective services voluntary unless court ordered.

(1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.

(2) Protective services may be provided without a court order for a vulnerable adult who does not lack capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.

(3) The court may order protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to services in accordance with this part.

Enacted by Chapter 108, 2002 General Session

62A-3-316. Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:

(1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written agreement for services described in Section 62A-3-315;

(2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or

(3) the court appoints a guardian or conservator and orders that the costs be

paid from the vulnerable adult's estate.

Enacted by Chapter 108, 2002 General Session

62A-3-317. Venue for protective services proceedings.

Venue for all proceedings for protective services under this chapter is in the county where the vulnerable adult resides or is present.

Enacted by Chapter 108, 2002 General Session

62A-3-318. Petition by division for protective services -- Notice -- Rights of adult.

(1) If the division determines that a vulnerable adult is in need of protective services but lacks capacity to consent to protective services, the division may petition the district court for an order authorizing the division to provide protective services. The petition shall include:

- (a) the name, address, and age of the adult who is the subject of the petition;
- (b) the reasonably ascertainable names and addresses of the spouse, parents, adult children, and caretaker of the adult who is the subject of the petition;
- (c) the name and address of any court-appointed guardian or conservator for the adult;
- (d) specific facts sufficient to show that the subject of the petition is a vulnerable adult in need of protective services; and
- (e) specific facts sufficient to show that the vulnerable adult lacks capacity to consent.

(2) Upon the filing of a petition, the court shall set a date for hearing on the petition. At least 10 days' notice of the petition and the hearing shall be given to the adult who is the subject of the petition and to each other person identified in Subsection (1)(b) or (c).

(3) The notice shall be in plain language and in at least a 14-point font. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the adult, and a list of rights as set forth in Subsections (4), (6), and (7). The petition and notice shall be served personally upon the adult who is the subject of the petition and upon the adult's spouse, caretaker, and parents if they can be found within the state. Notice to the spouse, caretaker, and parents, if they cannot be found within the state, and to other persons shall be given by first-class mail, postage prepaid.

(4) The adult who is the subject of the petition shall have the right to be present at the hearing, unless the adult has knowingly and voluntarily waived the right to be present, or unless a licensed physician has certified that the adult is physically unable to attend. Waiver shall not be presumed by nonappearance of the adult, but shall be determined by the court on the basis of evidence provided to the court.

(5) The adult who is the subject of the petition may be examined by a licensed physician appointed by the court, who shall submit a written report to the court. The adult may be interviewed by a visitor, as defined in Section 75-5-308, appointed by the

court, who shall submit a written report to the court. The visitor may also interview knowledgeable persons at the division and others who have knowledge of the adult who is the subject of the petition.

(6) The adult who is the subject of the petition has the right to be represented by counsel at all proceedings before the court. Unless the adult has retained counsel, the court shall appoint counsel. The fees of the adult's counsel shall be paid by the adult who is the subject of the petition unless the adult is indigent in which case the division will pay the adult's reasonable attorney fees.

(7) The adult who is the subject of the petition is entitled to present evidence and to cross-examine witnesses, including any court-appointed physician and visitor. The issues may be determined at a closed hearing if the adult who is the subject of the petition so requests.

(8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate Code.

Amended by Chapter 91, 2008 General Session

62A-3-319. Court order for protective services -- Review.

(1) Only upon court order may involuntary protective services be provided to a vulnerable adult who lacks capacity to consent to services.

(2) The court may order protective services if it is satisfied that the adult who is the subject of the petition under Section 62A-3-318 lacks capacity to consent to services and is in need of protective services. The court shall specifically state the purpose, extent, and limitations of the protective services, including specific findings of fact and conclusions of law. The court shall fashion any order so as to place the least possible restrictions on the rights of the vulnerable adult, consistent with the welfare, safety, and best interests of the adult.

(3) Any party to the proceedings may petition the court for modification or dissolution of the order at any time upon a showing of a material change in circumstances. Any protected person has the right to petition the court for a rehearing within 10 days after the date the order was entered.

Enacted by Chapter 108, 2002 General Session

**62A-3-320. Petition for emergency order -- Protective services --
Temporary guardian -- Forcible entry.**

(1) Upon the filing of a petition for an emergency order, the court may, without notice, order appropriate protective services, if the court finds that:

- (a) the subject of the petition is a vulnerable adult;
- (b) the adult has no court-appointed guardian or conservator or the guardian or conservator is not effectively performing the guardian's or conservator's duties;
- (c) an emergency exists; and
- (d) the welfare, safety, or best interests of the adult require immediate action.

(2) The order described in Subsection (1) shall specifically designate the protective services which are approved, together with supporting facts.

(3) Protective services authorized in an emergency order may not include hospitalization, nursing or custodial care, or a change in residence, unless the court specifically finds that the action is necessary and authorizes the specific protective services in the order.

(4) (a) Protective services provided through an emergency order may not be provided longer than three business days, at which time the order shall expire unless a petition for guardianship, conservatorship, or other protective services is filed.

(b) If a petition for guardianship, conservatorship, or other protective services is filed within the three-business-day period described in Subsection (4)(a), the emergency order may be continued for as long as 15 days from the day on which the last petition was filed, to allow time for a hearing to determine whether the emergency order shall remain in effect.

(5) In the emergency order, the court may appoint a temporary guardian, in accordance with Section 75-5-310.

(6) To implement an emergency order, the court may authorize forcible entry by a peace officer into the premises where the protected person is residing, only upon a showing that voluntary access into the premises is not possible and that forcible entry is required.

Amended by Chapter 91, 2008 General Session

62A-3-321. Petition for injunctive relief when caretaker refuses to allow services.

(1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.

(2) The division's petition under Subsection (1) shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services or to order other appropriate relief.

(3) The court may, on appropriate findings and conclusions in accordance with Rule 65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.

(4) The petition under Subsection (1) may be joined with a petition under Section 62A-3-318 or Section 62A-3-320.

Enacted by Chapter 108, 2002 General Session